

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

RAYMOND D. LEAVITT, )  
                          )  
Plaintiff            )  
                         )  
v.                    ) Civil No. 8-132-B-W  
                         )  
CORRECTIONAL MEDICAL )  
SERVICES, INC., et al., )  
                         )  
Defendants          )

ORDER GRANTING LEAVE TO PROCEED  
*IN FORMA PAUPERIS*

Plaintiff, an inmate at the Maine State Prison, Warren, Maine, seeks leave to proceed *in forma pauperis*. The Amended Application to proceed *in forma pauperis* has been completed and is accompanied by a Certificate signed by an authorized individual from the Institution. The Certificate evidences that the applicant has \$2.00 in his account as of May 1, 2008; that over the last six months the average deposits have been \$97.85 and the average monthly balance has been \$11.91.

The application is GRANTED, however, pursuant to 28 U.S.C. section 1915(b)(1), Plaintiff is required to pay the entire filing fee in this matter as funds become available. An initial partial filing fee is hereby ASSESSED in the amount of \$19.57. In the event Plaintiff elects to proceed with this matter and so notifies the Court, the initial partial filing fee shall be forwarded by the institution as soon as funds are available. Subsequent payments **of twenty percent (20%) of Plaintiff's prior monthly income** shall be forwarded directly **by the institution** each time the amount in the inmate's account exceeds \$10.00 until such time as the

entire filing fee of \$350.00 has been paid. Plaintiff is advised that, in the event he is released from incarceration prior to the filing fee of \$350.00 being paid in full, he is still required to pay the entire filing fee, absent further order of the court relieving him of the obligation.

In addition, Plaintiff is hereby on notice that the Court may dismiss this action if it:

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b). If the Court does dismiss the action under this section, Plaintiff will still be required to pay the filing fee in full.

Further, Plaintiff is hereby on notice that a prisoner with three in forma pauperis actions dismissed under section 1915(e) may not thereafter, absent "imminent danger of serious physical injury," file a new action without prepayment of the entire filing fee. 28 U.S.C. § 1915(g).

Finally, I am obligated to notify plaintiff that as presently drafted his complaint against the "Maine State Prison" is a nonstarter and will be summarily dismissed as to that defendant. I cannot authorize service on the Maine State Prison. The Supreme Court has said in Alabama v. Pugh , 438 U.S. 781, 782 (1978) that the Eleventh Amendment bars a suit of this nature. ("There can be no doubt, however, that suit against the State and its Board of Corrections is barred by the Eleventh Amendment, unless [the state] has consented to the filing of such a suit."). This Court must screen and dismiss claims against a party that is immune from "such relief." 42 U.S.C. § 1997e(c); 28 U.S.C.A. § 1915(e)(2)(iii); 28 U.S.C.A. § 1915A. The problem exists whether Leavitt is suing the State for violation of his constitutional rights or seeking monetary damages under the ADA. If Leavitt believes an individual state actor is subject to suit for violating his constitutional rights, he would have to name that individual as a defendant.

Now therefore, Plaintiff shall notify the Court no later than May 28, 2008, whether he intends to incur the cost of the filing fee and proceed with this action, or whether he intends to forego this litigation at this time. If Plaintiff elects to proceed, the written notification shall clearly indicate that Plaintiff understands his obligation to pay the full \$350 filing fee as funds are available, and that he nevertheless wishes to proceed with the action. Failure to fully comply with this Order will result in the issuance of a recommendation to dismiss the Complaint. A copy of this Order shall be forwarded to the Business Office of Maine State Prison, Warren, Maine, ***following Plaintiff's indication to the Court that he intends to go forward with this matter and incur the \$350.00 cost of suit.***

SO ORDERED.

Dated May 7, 2008.

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge